

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1271 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

RENUKABEN KANTILAL

Versus

STATE OF GUJARAT

Appearance:

MR PM BHATT for Petitioners

MR TS SOMPURA ADDL.GP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 5

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 06/04/98

ORAL JUDGEMENT

Learned counsel for the petitioners seek permission to delete respondent no. 5 from the present proceedings. Permission as prayed for is granted. Name of respondent no. 5 stands deleted from the present

proceedings.

Rule. Mr. T.H Sompura, the learned APP waives service of notice of rule on behalf of Respondents. At the request of learned counsel appearing for the parties, petition is taken up for hearing today.

By means of filing this petition under Articles 226 and 227 of the Constitution, the petitioners have prayed to quash and set aside Order dated November 19, 1985 passed by the Competent Authority and Deputy Collector, Surat by which land admeasuring 3530 sq. meters out of Survey no. 84, situated at village Piplod, Taluka Chauryasi is declared to be excess land under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (for short, "the Act"). The petitioners have further prayed to quash and set-aside the order dated December 30, 1997 rendered by the Urban Land Tribunal, Ahmedabad by which appeal filed by the petitioners against order of the Competent Authority is rejected on the ground that powers were already exercised by the State Government under Section 34 of the Act.

Petitioners and Smt. Ranjanben Ashwinkumar purchased land admeasuring 3025 sq.yards (2529.29 sq. meters out of Survey No. 84 situated at village Piplod, Taluka-Chauryasi, District Surat by a registered sale deed dated August 30, 1968. The petitioners have produced zerox copy of the sale deed at Annexure "H-1" to the petition. The land purchased was actually partitioned by metes and bounds between the petitioners and Smt. Ranjanben Ashwinkumar by a registered deed of partition. A copy of the registered deed of partition is produced by the petitioners at Annexure "H" to the petition. From the contents of Annexure "H" it is evident that land admeasuring 645.10 sq. meters had come to the share of the petitioner no.1 whereas land admeasuring 916.57 sq. meters had gone to the share of petitioner no. 2 and land admeasuring 716.86 sq. meters had gone to the share of Smt. Ranjanben Ashwinkumar on partition. The Act was brought into force with effect from February 17, 1976 but as noted earlier, before the said date, partition had taken place and respective holdings were allotted to the petitioners on partition. Section 6 of the Act requires that every person holding vacant land in excess of the ceiling limit at the commencement of the Act has to file a statement before the Competent Authority in the prescribed form. The respective holding of each of the petitioners was not in excess of the ceiling limit prescribed under the Act, and

therefore, it was not necessary for any of the petitioners to file a statement before the Competent Authority as contemplated by Section 6 (1) of the Act. However, both the petitioners filed statement under Section 6 (1) of the Act with a view to avoiding the liabilities arising out of default. The statement filed by petitioner no. 1 is produced at Annexure "A" to the petition. In the said statement, it was mentioned by petitioner no. 1 that she was owner of land admeasuring 645.12 sq. m. out of Survey No. 84 situated at village Piplod, Taluka-Chauryasi, District-Surat. Similar such statement was filed by petitioner no. 2 before the Competent Authority. However, the statement filed by petitioner no. 2 is not produced on the record of the present petition. The petitioners have averred that petitioner no. 2 in her statement filed under Section 6 (1) of the Act had mentioned that she was holding land admeasuring 916.57 sq.m. out of Survey No. 84 situate at village Piplod, Taluka-Chauryasi, District-Surat. This statement made on oath is not controverted by the respondents. From the order of the Competent Authority, which is produced at Annexure "B" to the petition, it is evident that the Competent Authority proceeded on the footing that the petitioners were owner of Survey No. 84 totally admeasuring 6530 sq.m and permitted each of the petitioners to hold 1500 sq.m and declared 3530 sq.m as excess land under the Act.

The order passed by the Competent Authority was taken into suo-motu revision by the State Government. However, the State Government did not interfere with the order passed by the Competent Authority vide order dated May 4, 1992 which is produced by the petitioner at Annexure "G" to the petition. The order passed by the Competent Authority was challenged by the petitioners before the Urban Land Tribunal, Ahmedabad by filing appeal, however, the appellate authority refused to interfere with the order of the Competent Authority on the ground that the State Government had not interfered with the order of the Competent Authority under the provisions of Section 34 of the Act. The order passed by the appellate Tribunal is produced by the petitioners at Annexure "C" to the petition, which has given rise to the present petition.

Mr. P.M Bhatt, learned counsel for petitioners submitted that before coming into force of the Act, partition had taken place between the joint owners of the land bearing Survey No. 84 by a Deed dated August 14, 1975 and as the petitioners had filed statement under Section 6 (1) of the Act, in mistaken belief, the

respective holding of the petitioners was not liable to be declared excess under the provisions of the Act. The learned counsel for petitioners, therefore, submitted that the impugned orders are liable to be set-aside. Mr. T.H Sompura, learned AGP contended that having regard to the facts of the act, the Appellate Authority has rightly rejected the appeal filed by the petitioners, and therefore, the Court should not interfere with the impugned orders in the present petition.

From the averments made in the petition, which are not controverted by the respondents, it is evident that petitioners with Smt. Ranjanben Ashwinkumar had purchased land admeasuring 2529 sq.m out of Survey No. 84 of Village-Piplod, Taluka-Chauryasi, District Surat. It may be mentioned that Survey No. 84 totally admeasures 6530 sq.m. After the purchase, the land in question was partitioned between petitioners and Smt. Ranjanben Ashwinkumar by metes and bounds. On partition, land admeasuring 645.10 sq.m had come into the share of petitioner no. 1 and land admeasuring 916.57 sq.m had gone to the share of petitioner no. 2. As observed earlier, the provisions of the Act were brought into force with effect from February 17, 1976 and in terms of Section 6 of the Act neither petitioner no. 1 nor the petitioner no. 2 was holding any vacant land in excess of the ceiling limit prescribed under the Act. It was, therefore, not necessary for any of the petitioners to submit statement as required by Section 6 (1) of the Act before the Competent Authority. The petitioners had filed respective statements under Section 6 (1) of the Act with a view to avoiding the liabilities arising out of default and under a mistaken belief though the petitioners were not holding the land in excess than the ceiling limit prescribed under the Act. It was not open to the Competent Authority to consider the statement on the footing that any of the petitioners was holding land in excess of the ceiling limits. In fact, in the statement, it was clearly mentioned by the petitioner no. 1 that she was holding land admeasuring 645.12 sq.m out of Survey no. 84 situated at village-Piplod, Taluka-Chauryasi, District Surat. Similarly, it was stated by the petitioner no. 2 in her statement, which was filed under Section 6 (1) of the Act, that she was holding land admeasuring 916.57 sq.m out of Survey no. 84 situated at village-Piplod. The Competent Authority, however, proceeded on the footing that the petitioners were owner of the whole Survey no. 84 totally admeasuring 6530 sq.m. In fact, only a part of the land was jointly purchased by the petitioners with Smt. Ranjanben Ashwinkumar and the part purchased admeasured

2529.29 sq.m. Under the circumstances, the Competent Authority was not justified in permitting each of the petitioners to retain 1500 sq.m and declaring 2530 sq.m as excess land under the provisions of the Act. On this ground, the order passed by the State Government refusing to revise decision of the Competent Authority under Section 34 as well as the appellate order passed by the Urban Land Tribunal will have to be set-aside as the same proceed on incorrect factual basis. The learned counsel for petitioners has stated at the bar that the petitioner no. 1 is owner of the land admeasuring 645.10 sq.m whereas petitioner no. 2 is owner of land admeasuring 916.57 sq.m out of Survey no. 84 situated at Village-Piplod, Taluka-Chauryasi, District Surat and they do not claim any ownership with reference to any other part of the land of Survey no. 84 nor do they hold any other land within the Urban agglomeration of Surat. As the petitioners were not holding land in excess of the limit prescribed under the Act at the relevant date, provisions of the Act cannot be made applicable to their holdings even if statement under Section 6 (1) of the Act was submitted by each of the petitioners. Under the circumstances, holding of each of the petitioners is entitled to be excluded under the provisions of the Act.

For the foregoing reasons, this petition succeeds. The orders which are produced at Annexure "B", "C" and "D" are hereby set-aside and quashed. It is declared that none of the petitioners is possessing land in excess of the ceiling limit prescribed under the Act. Rule is made absolute with no order as to costs.

Prakash*